

DON C. TRACY
GORDON C. TRACY

IBLA 82-747

Decided June 29, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 21606 through OR MC 21609, OR MC 21625 through OR MC 21631, OR MC 21648, and OR MC 21649.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, the presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Evidence: Presumptions -- Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their duties.

APPEARANCES: William F. Hanlon, Esq., Lakeview, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On March 18, 1982, the Oregon State Office, Bureau of Land Management (BLM), issued four decisions declaring a number of unpatented mining claims abandoned and void because no proof of labor or notice of intent to hold them was received by BLM in 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The claim have serial numbers OR MC 21573 through OR MC 21654.

Appeal is taken by Don C. Tracy and Gordon C. Tracy from the decisions only as they pertain to the Golden #1 through #5, OR MC 21627 through OR MC 21631; Big Boy #1, #2, #3, and #6, OR MC 21606 through OR MC 21609; P T #1, OR MC 21626; GP #1, #2, OR MC 21648, and OR MC 21649; and Tenn #1, OR MC 21625.

Appellants state that they performed assessment work on the claims in 1980 and recorded the proofs of labor in Lake County, Oregon, on various dates in August 1980, as they hold a large number of claims. Consonant with their determination to drop some of their claims, they made a check list of the claims they wished to retain. Then they prepared proofs of labor for recordation in the county of the claims to be retained. After recordation in the county, the proofs of labor were cross-checked against their list, and copies of the proofs of labor were placed by Don C. Tracy in an envelope for transmittal to BLM. The contents of the envelope were separately checked by Gordon C. Tracy before mailing. Each appellant has submitted an affidavit of his part in the procedure and each avers that five proofs of labor were in the envelope, despite the statement by BLM that only four proofs of labor were received from appellants. Appellants contend that BLM misplaced the fifth proof of labor relating to the claims named in this appeal.

BLM reiterates that it received only four proofs of labor from appellants in 1980, and that none of the proofs of labor related to the claims in this appeal was ever received.

[1] It is well established that failure of the owner of an unpatented mining claim to submit evidence of assessment work or a notice of intent to hold the claim, both to the county where the location notice of the claim is recorded and to the proper office of BLM, prior to December 31 each year shall, be deemed conclusively to constitute an abandonment of the claim. 43 U.S.C. § 1744(c), 43 CFR 3833.4(a).

[2] As the Board stated in Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981):

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining, Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

Appellant also argues that the intention not to abandon these claims was apparent. * * * At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered.

53 IBLA at 196-97; 88 I.D. at 371-72.

[3] A legal presumption of regularity attends the official acts of public officers, and in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Kephart v. Richardson, 505 F.2d 1085, 1090 (3rd Cir. 1974); Lawrence E. Dye, 57 IBLA 360 (1981); John Walter Starks, 55 IBLA 266 (1981). Rebuttal of such a presumption requires the presentation of substantial countervailing evidence. Stone v. Stone, 136 F.2d 761, 763 (D.C. Cir. 1943).

In Starks, supra, a case involving the submission of ancillary information relative to an oil and gas lease offer, the Board stated:

This Board has previously considered the problem of alleged BLM misplacement of offeror's interest statements. E.g., Charles J. Babington, supra; [36 IBLA 107 (1978)] W. J. Langley, supra; [32 IBLA 118 (1977)] Duncan Miller, 29 IBLA 43 (1977). In Langley and Owen, supra, [David F. Owen, 31 IBLA 24 (1977)] we held that the evidence tendered by the appellants to show that they had in fact sent their fractional interest declaration along with their entry that cards to the BLM was insufficient to rebut the legal presumption that administrative officials have properly discharged

their duties and had not misplaced or lost the document in issue. In Owen we noted that BLM also follows procedures, amounting to "regular business practice," to insure that submitted materials are not mishandled. We also noted the adverse effect that would accrue to the holders of the next priority and to BLM's efforts to effectively administer the program were we to hold that such evidence is sufficient. 31 IBLA at 29. [Footnote omitted.]

We find that the assertions contained in the affidavits submitted by appellant do not constitute a sufficient predicate for holding that the agent-offeror statement of interest was properly submitted to the BLM, and that BLM lost it.

55 IBLA at 270.

After a careful review of the submission by appellants, we do not believe that they have overcome the presumption of regularity. It does not appear that appellants transmitted their proofs of labor with a cover letter naming the documents enclosed. We must hold that appellants failed to file the proofs of labor for 1980 for the claims involved in this appeal, and that BLM properly deemed the claims abandoned pursuant to 43 U.S.C. § 1744(c) (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

